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TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

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## Final Rule

LSA Document #07-36(F)

## DIGEST

Amends [105 IAC 11-1-2](#), [105 IAC 11-1-6](#), [105 IAC 11-1-10](#), [105 IAC 11-1-12](#), [105 IAC 11-1-14](#), [105 IAC 11-1-16](#), [105 IAC 11-1-18](#), [105 IAC 11-1-19](#), [105 IAC 11-1-20](#), [105 IAC 11-1-24](#), [105 IAC 11-1-28](#), [105 IAC 11-1-31](#), [105 IAC 11-2-8](#), [105 IAC 11-3-2](#), [105 IAC 11-3-3](#), [105 IAC 11-3-4](#), [105 IAC 11-3-5](#), [105 IAC 11-3-6](#), [105 IAC 11-3-7](#), [105 IAC 11-3-8](#), [105 IAC 11-3-9](#), [105 IAC 11-3-10](#), [105 IAC 11-3-11](#), [105 IAC 11-3-12](#), [105 IAC 11-3-13](#), [105 IAC 11-3-14](#), [105 IAC 11-3-14.5](#), [105 IAC 11-3-15](#), and [105 IAC 11-3-16](#) and adds [105 IAC 11-1-13.3](#), [105 IAC 11-1-24.3](#), and [105 IAC 11-1-25.5](#), which govern the Indiana Department of Transportation's prequalification of contractors and the bidding process. Effective 30 days after filing with the Publisher.

[105 IAC 11-1-2](#); [105 IAC 11-1-6](#); [105 IAC 11-1-10](#); [105 IAC 11-1-12](#); [105 IAC 11-1-13.3](#); [105 IAC 11-1-14](#); [105 IAC 11-1-16](#); [105 IAC 11-1-18](#); [105 IAC 11-1-19](#); [105 IAC 11-1-20](#); [105 IAC 11-1-24](#); [105 IAC 11-1-24.3](#); [105 IAC 11-1-25.5](#); [105 IAC 11-1-28](#); [105 IAC 11-1-31](#); [105 IAC 11-2-8](#); [105 IAC 11-3-2](#); [105 IAC 11-3-3](#); [105 IAC 11-3-4](#); [105 IAC 11-3-5](#); [105 IAC 11-3-6](#); [105 IAC 11-3-7](#); [105 IAC 11-3-8](#); [105 IAC 11-3-9](#); [105 IAC 11-3-10](#); [105 IAC 11-3-11](#); [105 IAC 11-3-12](#); [105 IAC 11-3-13](#); [105 IAC 11-3-14](#); [105 IAC 11-3-14.5](#); [105 IAC 11-3-15](#); [105 IAC 11-3-16](#)

SECTION 1. [105 IAC 11-1-2](#) IS AMENDED TO READ AS FOLLOWS:

[105 IAC 11-1-2](#) "Advertisement" defined

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 2. "Advertisement" means the public announcement, as required by law, inviting bids for work to be performed or materials to be furnished. **The department may elect to use electronic or other means to disseminate the public announcement.**

(Indiana Department of Transportation; [105 IAC 11-1-2](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2182; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 2. [105 IAC 11-1-6](#) IS AMENDED TO READ AS FOLLOWS:

[105 IAC 11-1-6](#) "Bid bond" defined

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 6. "Bid bond" means the approved form of security furnished with a bid to guarantee that the bidder will enter into the contract if ~~its bid~~ **the bidder** is ~~accepted~~ **awarded the contract**.

(Indiana Department of Transportation; [105 IAC 11-1-6](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2182; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 3. [105 IAC 11-1-10](#) IS AMENDED TO READ AS FOLLOWS:

[105 IAC 11-1-10](#) "Contract" defined

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 10. (a) "Contract" means the ~~written~~ **signed** agreement between the department and the contractor setting forth the obligations of the parties thereto including, but not limited to, the following:

- (1) Performance of the work.
- (2) Furnishing labor and materials.
- (3) The basis of payment.

(b) The contract may include, but is not limited to, the following:

(1) Proposal **bid**.

~~(2) Itemized proposal.~~

**(2) Schedule of pay items.**

(3) Contract form.

(4) Bid bond.

(5) Performance bond.

(6) Specifications.

(7) Supplemental specifications.

(8) Special provisions.

(9) Additional special provisions.

(10) Information to bidders.

(11) Instructions to bidders.

(12) General and detailed plans.

(13) Notice to proceed.

(14) Any change orders and agreements that are required to complete the construction of the work in an acceptable manner (including authorized extensions thereof) all of which constitute one (1) instrument.

(Indiana Department of Transportation; [105 IAC 11-1-10](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2182; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 4. [105 IAC 11-1-12](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-1-12](#) "Date of receipt" defined**

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 12. "Date of receipt" means the date the document is file stamped by the prequalification engineer.

**Electronic documents or files are deemed received when placed in the electronic address, designated by the department.**

(Indiana Department of Transportation; [105 IAC 11-1-12](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2183; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 5. [105 IAC 11-1-13.3](#) IS ADDED TO READ AS FOLLOWS:

**[105 IAC 11-1-13.3](#) "Designated electronic medium" defined**

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

**Sec. 13.3. "Designated electronic medium" means the public or private entity designated by the department for the posting of plans, special provisions, or other contract-specific requirements and for the posting, assurance of security and authenticity, and submission of binding bids to perform department contracts.**

(Indiana Department of Transportation; [105 IAC 11-1-13.3](#); filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 6. [105 IAC 11-1-14](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-1-14](#) "Document" defined**

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 14. "Document" includes, without limitation:

- (1) writings;
- (2) drawings;
- (3) graphs;
- (4) charts;
- (5) photographs;
- (6) phono-records; and
- (7) electronic files; and**
- ~~(7) (8)~~ **(8) other data compilations;**

~~from which intelligence can be perceived, with or without the use of detection devices.~~ **intended to convey information.**

(Indiana Department of Transportation; [105 IAC 11-1-14](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2183; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 7. [105 IAC 11-1-16](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-1-16](#) "Notice to contractors" defined**

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 16. "Notice to contractors" ~~refers to~~ **means** the written bulletin **in a format determined by the department that is** distributed by the department inviting bids for work to be performed, listing the:

- (1) type of work;
- (2) location;
- (3) qualification requirements; and the
- (4) cost of the bidding documents.

(Indiana Department of Transportation; [105 IAC 11-1-16](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2183; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 8. [105 IAC 11-1-18](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-1-18](#) "Performance bond" defined**

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 18. "Performance bond" means the approved form of security, furnished and executed by the bidder and its surety or sureties, guaranteeing complete execution of the contract **in accordance with all applicable plans, specifications,** and all supplemental agreements pertaining thereto and for the payment of all legal debts pertaining to the construction of the project. The performance bond will be in effect ~~after both parties have signed upon the proper execution of the contract. and the contract has been approved by the attorney general of the state of Indiana.~~

(Indiana Department of Transportation; [105 IAC 11-1-18](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2183; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 9. [105 IAC 11-1-19](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-1-19](#) "Plans" defined**

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 19. "Plans" includes the approved plans, profiles, typical cross sections, working drawings, and supplemental drawings (or exact reproductions **or electronic files** thereof) ~~which that~~ show the:

- (1) location;
- (2) character;
- (3) dimensions; and
- (4) details;

of the work to be done.

(Indiana Department of Transportation; [105 IAC 11-1-19](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 10. [105 IAC 11-1-20](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-1-20](#) "Prequalification committee" defined**

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 20. "Prequalification committee" means the committee appointed by the commissioner to:

- (1) **verify and monitor a contractor's compliance with contractual requirements;**
- (2) **issue, modify, or deny certificates of qualification;**
- (3) **evaluate contractors; and**
- (4) establish the policies and procedures under which a contractor may be qualified **or disqualified.**

(Indiana Department of Transportation; [105 IAC 11-1-20](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 11. [105 IAC 11-1-24](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-1-24](#) "Proposal bid" defined**

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 24. "Proposal **bid**" means the offer of a bidder, ~~on in a prescribed form,~~ **format prescribed by the department,** to perform the work and to furnish the labor and materials at the prices quoted.

(Indiana Department of Transportation; [105 IAC 11-1-24](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 12. [105 IAC 11-1-24.3](#) IS ADDED TO READ AS FOLLOWS:

**[105 IAC 11-1-24.3](#) "Proposal form" defined**

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

**Sec. 24.3. "Proposal form" means the form issued by the department through which the bidder submits its proposal bid.**

(Indiana Department of Transportation; [105 IAC 11-1-24.3](#); filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 13. [105 IAC 11-1-25.5](#) IS ADDED TO READ AS FOLLOWS:

**[105 IAC 11-1-25.5](#) "Signed" defined**

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

**Sec. 25.5. "Signed" means properly endorsed, either through written or electronic means.**

(Indiana Department of Transportation; [105 IAC 11-1-25.5](#); filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 14. [105 IAC 11-1-28](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-1-28](#) "Standard specifications" defined**

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 28. "Standard specification book" **specifications** means the published book adopted by the department containing **compilation of** standard specifications and general provisions:

(1) **adopted by the department; and**

(2) **published by compact disk, the department's Internet site, or other media.**

(Indiana Department of Transportation; [105 IAC 11-1-28](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2184; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 15. [105 IAC 11-1-31](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-1-31](#) "Supplemental specifications" defined**

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 31. "Supplemental specifications" refers to additions and revisions to the standard specifications that are adopted subsequent to issuance of the standard ~~specification book~~. **specifications.**

(Indiana Department of Transportation; [105 IAC 11-1-31](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2185; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 16. [105 IAC 11-2-8](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-2-8](#) Revocation of certificate of qualification**

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10-2](#); [IC 8-23-10-8](#)

Sec. 8. (a) A certificate of qualification may be revoked if it is administratively determined by the prequalification committee that the contractor or subcontractor has done any of the following:

(1) Failed to timely pay, or satisfactorily settle, any bills due to labor and material on former or existing contracts.

(2) Is found to be in violation of either a state or federal law or regulation or the rules ~~and regulations~~ of a state or federal:

(A) department;

(B) board;

(C) bureau;

(D) agency; or

(E) commission.

(3) Defaulted on a contract.

(4) Failed to enter into a department contract.

- (5) Falsified any document required by:
- (A) the department;
  - (B) the state board of accounts; or
  - (C) any agency of the state of Indiana.

For the purpose of this section, the term "falsify" means an intentional as well as a negligent act of omission or commission.

(6) Was convicted of a bidding crime resulting from a jury or bench trial, entered into a plea of guilty or nolo contendere, made a public admission, made a presentation as an unindicted co-conspirator, or gave testimony, which is protected by a grant of immunity, in any jurisdiction.

(7) Failed to perform any part or portion of an existing or previous contract.

(8) Failed to submit in a timely manner:

- (A) information;
- (B) documented explanations; and/or or
- (C) evidence;

required in the contract documents or proposal form.

(9) Has been debarred by a federal agency.

(10) Failed to comply with any and all proposal form requirements concerning disadvantaged business enterprise (DBE) and women business enterprise (WBE) goals.

(11) Had knowledge that a subcontractor further subcontracted its work.

(12) Offered or gave a gift with a market value of ten dollars (\$10) or more, to a unit, officer, or employee of the department, or repetitively offered or gave gifts of a value of ten dollars (\$10) or less to a unit, officer, or employee of the department.

(b) Notification of such pending action shall be made in writing, setting forth the grounds for the proposed certificate revocation. The revocation will become effective after all avenues of appeal under section 9 of this rule are exhausted. The period of disqualification will not exceed two (2) years.

*(Indiana Department of Transportation; [105 IAC 11-2-8](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2190; filed Jun 25, 1992, 5:00 p.m.: 15 IR 2452; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))*

SECTION 17. [105 IAC 11-3-2](#) IS AMENDED TO READ AS FOLLOWS:

#### **[105 IAC 11-3-2](#) Issuance of proposal forms**

**Authority:** [IC 8-23-2-6](#)

**Affected:** [IC 8-23-10](#)

Sec. 2. (a) When requested, ~~bidding proposals~~ **a proposal form** will be issued to any properly qualified contractor up to 4:30 p.m., Indianapolis time, on the last workday immediately preceding the bid opening date unless otherwise indicated in the advertisement. ~~A proposal issued for informational purposes only will be marked "sample proposal" and will not be accepted as a bid from any person.~~ The prospective bidder, and other persons, will be required to pay the sum stated in the notice to contractors for bidding material ordered. No refunds will be made for materials ordered and returned except in cases of error in filling orders or when a project advertised is withdrawn prior to the bid opening. **The department will make proposal forms available electronically through a designated electronic medium as specified by the department's notice to contractors.**

(b) The contractor or bidder ~~purchasing a proposal and plans~~ **submitting a bid** accepts and assumes the risk that the proposal **form** and plans are complete. ~~Before the submission of~~ **By submitting** a bid, the contractor or bidder ~~shall check~~ **certifies that it has checked** the proposal **form** and plans to **see confirm** that they are complete. The contractor or bidder agrees to waive all claims relating to the completeness of the proposal **form** and plans. If **the contractor or bidder finds** an error is found, or omission, the contractor or bidder shall notify the ~~prequalification engineer in writing~~ **department as specified in the proposal form** at least ten (10) days before the date the bids are to be opened.

*(Indiana Department of Transportation; [105 IAC 11-3-2](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2192; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))*

SECTION 18. [105 IAC 11-3-3](#) IS AMENDED TO READ AS FOLLOWS:

### **105 IAC 11-3-3 Qualification**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 3. (a) The department's notice to contractors will list one (1) or more types or classes of work for a contract.

(b) A bidder must have bidding capacity equal to or greater than its total bid in the advertised class or combination of classes of work listed in the department's notice to contractors for the specific contract.

~~(b)~~ (c) A contractor not acceptable to the Federal Highway Administration is not eligible for work on a contract involving federal funds.

*(Indiana Department of Transportation; 105 IAC 11-3-3; filed Jul 25, 1991, 3:30 p.m.: 14 IR 2192; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: 20070620-IR-105070036FRA)*

SECTION 19. 105 IAC 11-3-4 IS AMENDED TO READ AS FOLLOWS:

### **105 IAC 11-3-4 Bidding capacity**

**Authority:** IC 8-23-2-6

**Affected:** IC 8-23-10

Sec. 4. (a) **If the bidder's aggregate amount of work is greater than three hundred thousand dollars (\$300,000), then** the bidder's bidding capacity with the department on any given date will be determined by deducting the value of all unearned work as of that date on contracts and subcontracts for work of any owner, contractor, or other party from the aggregate rating and from the appropriate classified ratings ~~which that~~ are stated on its certificate of qualification. ~~except,~~ If the bidder's aggregate amount is **equal to or** less than three hundred thousand dollars (\$300,000), the bidder's bidding capacity with the department on any given date will be determined as the lesser of the following: **value of all unearned work as of that date on:**

- (1) ~~The value of all unearned work as of that date on~~ contracts for work of any owner or other party deducted from the aggregate rating and from the appropriate classified ratings ~~which that~~ are stated on the bidder's certificate of qualification; **or**
- (2) ~~The value of all unearned work as of that date on~~ contracts and subcontracts for work of any owner, contractor, or other party deducted from three hundred thousand dollars (\$300,000).

(b) The value of work subcontracted on existing contracts of the department to an approved subcontractor will not be considered as unearned work of the bidder in determining the contractor's bidding capacity.

(c) It shall be the responsibility of each qualified bidder to ensure that a bid submitted for a single contract does not exceed its bidding capacity on the date bids are opened. If the bidder does not limit the sum of its regular bids to the volume of work permitted by its bidding capacity, the department may selectively award low bids up to, but not exceeding, the bidder's bidding capacity.

(d) The bidder must show, on the form provided in each proposal **bid**, the ~~following:~~ **total and type of all unearned work:**

- (1) ~~The amount and type of all unearned work under contract~~ **with any owner, contractor, or other party** either as principal or subcontractor, based on the latest engineer's or owner's estimate, with proper allowance for work subsequently performed; **and**
- (2) ~~The portion of such unearned work on department contracts which is~~ **under the department's approved subcontracts** sublet to an approved subcontractor.

(e) The commitment of personnel and equipment on a payroll or rental basis for the performance of definite and specific work must be reported as unearned work even though no formal contract ~~exists:~~ **may exist.**

(Indiana Department of Transportation; [105 IAC 11-3-4](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2192; filed Jun 14, 1993, 5:30 p.m.: 16 IR 2539; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 20. [105 IAC 11-3-5](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-3-5](#) Joint ventures**

**Authority:** [IC 8-23-2-6](#)

**Affected:** [IC 8-23-10](#)

Sec. 5. (a) A bid of two (2) or three (3) contractors will be considered a joint venture. ~~Ne~~ **Not** more than three (3) contractors will be permitted as parties to a joint venture. All contractors applying for joint venture approval must be prequalified separately.

(b) A contractor that is a member of a joint venture may not submit a proposal **bid**, in its individual capacity or as a participant in another joint venture, for the same contract on which the joint venture bids.

(c) The bidding proposal:

(1) will be taken out in the name of the joint venture; ~~It~~ **and**

(2) shall be signed by each participating contractor;

with each contractor fully responsible for the completion of all contract items. **For electronic proposal bids, the joint bidder will be issued a unique vendor identification by the designated electronic medium, and the unique vendor identification shall be used to sign the joint venture.** The contractors in the joint venture may combine their individual bidding capacities in order to meet the requirements of section 3 of this rule. A contractor in a joint venture shall have bidding capacity for the work the contractor is to perform. The bid items or the percentage of the bid item to be performed by a contractor in the joint venture must be shown in the proposal **bid**. The value thereof will be charged to the individual contractor's aggregate and classified bidding capacity.

(d) A request for a joint venture is subject to department approval and must be ~~in writing~~ **executed** on the form prescribed by the department. The form must be:

(1) signed by all parties involved in the joint venture; ~~The form must be notarized by a notary public unrelated to any party to the joint venture, and The form must be~~

(2) received in the office of the prequalification engineer not later than 9:00 a.m., ~~local~~ **Indianapolis** time, the last workday before the bid opening.

The prescribed form is available ~~from~~ **on** the ~~prequalification engineer.~~ **department's Web site.**

(e) The bid and performance bond may be executed by a surety for all parties to the joint venture, or a separate bid and performance bond may be executed for each participating contractor. When more than one (1) surety is used, a letter of agreement ~~on the form available from the department~~ must be included with the bid and signed by each surety.

(Indiana Department of Transportation; [105 IAC 11-3-5](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2193; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 21. [105 IAC 11-3-6](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-3-6](#) Examination of contract documents and site of work**

**Authority:** [IC 8-23-2-6](#)

**Affected:** [IC 8-23-10](#)

Sec. 6. (a) The bidder shall make a ~~careful~~ **reasonable** visual examination of the site of the proposed work and the contract documents before submitting a proposal **bid**. The submission of a proposal **bid** will be considered conclusive evidence that the bidder has made a ~~careful~~ **reasonable** visual examination of the project site and contract documents.

(b) When an item listed as a pay item is:

(1) shown on the plans and not in the ~~itemized proposal~~, **schedule of pay items**; and the item is

(2) not specifically excluded from payment in the specifications or in the contract documents;

the item ~~will may~~ be considered an omission in the ~~itemized proposal~~, and payment will be made by the execution of a change order. **schedule of pay items or an error in the plans. The department may revise the schedule of pay items or the plans. The department also may determine that payment for the item will be made in accordance with the department's Standard Specifications when the work has been authorized by the department and performed by the contractor.**

(c) Information pertaining to exploration, borings, test pits, and other preliminary investigations may appear on the plans. Soils investigation reports, when available, will be made available for inspection upon request. ~~While the data will have been collected with reasonable care,~~ There is no expressed or implied guarantee that conditions so indicated **in the soil investigation reports** are entirely representative of those actually existing, or that unanticipated conditions may not exist. These investigations will have been made only for the information of the engineer and to assist in the preparation of the design. The state of Indiana assumes no responsibility for the completeness of the information nor for the actual subsoil or other conditions ~~which that~~ may be found to exist during the progress of construction unless otherwise provided in the contract. The bidder shall:

(1) put its own interpretation on results of the investigations; and

(2) satisfy itself as to materials to be excavated and soil through which piles may be driven.

(d) If a bidder contemplating the submission of a proposal **bid** for a contract is in doubt as to the true meaning of any part of the plans, specifications, or other contract documents, the bidder may submit to the ~~prequalification engineer~~ **department** a written request for an interpretation thereof **as specified in the proposal form**. The request must be delivered to the ~~prequalification engineer~~ **department** not later than ten (10) days before the advertised date for the opening of bids. ~~Such~~ **The** interpretation will be:

(1) made by an authorized representative of the department; and ~~be sent to all bidders who have purchased or who subsequently purchase the bidding proposal and plans for that project.~~

(2) **posted as designated on the proposal page.**

The department will not be responsible for other interpretations of the contract documents.

(e) With respect to utilities and railroads, the bidder ~~is responsible for what~~ **shall conduct a reasonable visual** review of the project site and contract documents. ~~would have disclosed.~~ If there are obvious problems **that the bidder knows of or should know of** with respect to utilities or railroads, the bidder shall make a reasonable inquiry of the utility or railroad before submitting its proposal **bid**.

(Indiana Department of Transportation; [105 IAC 11-3-6](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2193; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 22. [105 IAC 11-3-7](#) IS AMENDED TO READ AS FOLLOWS:

#### **[105 IAC 11-3-7](#) Preparation of proposal bid**

**Authority:** [IC 8-23-2-6](#)

**Affected:** [IC 8-23-9-21](#); [IC 8-23-10](#)

Sec. 7. (a) All papers bound with or attached to the proposal are considered a **No** part thereof and **of the proposal form or proposal bid** shall not be **deleted**, detached, or altered. ~~when the proposal is submitted. The documents designated in the proposal will be considered a part of the proposal whether attached or not.~~

(b) The quantities appearing in the ~~itemized proposal~~ **schedule of pay items** are approximate and are prepared for the comparison of bids. Payment to the contractor will be made only for:

(1) the actual quantities of work performed and accepted; or for

(2) materials furnished in accordance with the contract. ~~unless otherwise provided.~~

The scheduled quantities of work to be done and materials to be furnished may be increased, decreased, or omitted.

(c) The bidder must submit its bid on the proposal purchased from the department or on other authorized documents. The proposal must show the products of the respective unit prices and quantities written in figures in the column provided for that purpose and the total amount of the proposal obtained by adding the several items. All figures must be in ink or typed, **in the format specified by the proposal form. All required items in the proposal form must be complete when submitted.**

(d) **If the proposal form allows a paper bid to be submitted**, the bidder may submit itemized proposal sheets **a schedule of pay items** that have **has** been produced by computer in lieu of the itemized proposal sheets furnished by the department. The computerized itemized proposal sheets shall be formatted as follows: **using the electronic schedule of pay items provided on the department's Web site.**

- (1) The size of the sheets must be eight and one half (8 1/2) inches by eleven (11) inches.
- (2) The contract number must be shown in the upper right hand corner of each sheet.
- (3) The letting date must be shown on each sheet.
- (4) A revision date must be shown on each sheet if a revision to the itemized proposal has been issued.
- (5) The bidder's printed name must be shown on each sheet.
- (6) The sheet number must be shown on each sheet.
- (7) A line or space must be placed between pay items.
- (8) Item numbers must be placed in numerical order corresponding with those on the supplied itemized proposal sheets.
- (9) Item descriptions, quantities, prices, and units must correspond with those shown on the supplied itemized proposal sheets.
- (10) A unit price must be shown for each item, except lump sum may be entered in place of the unit price where appropriate.
- (11) A price extension must be shown for each item.
- (12) The total bid amount must be clearly indicated on the last sheet.
- (13) The blank itemized proposal sheets furnished by the department must be included in the proposal book when submitted for letting, and all computerized itemized proposal sheets must be inserted in numerical order in front of the itemized proposal sheets furnished by the department.

(e) If a bidder states an incorrect item description, quantity, price, or unit, then the item description, quantity, price, or unit shown on the department's itemized proposal sheets, **schedule of pay items**, will control. The department will:

- (1) correct an incorrect item number if the bidder's intent is clear; ~~The department will and~~
- (2) compute the bid based on the:
  - (A) item numbers shown on the bidder's computerized itemized proposal sheets, **schedule of pay items** and any corresponding item numbers the department corrects; ~~the~~
  - (B) quantity and units for each item shown on the department's itemized proposal sheets, **schedule of pay items**; and ~~the~~
  - (C) bidder's unit price or lump sum price for each item, regardless of the item description, quantity, or unit shown on the computerized itemized proposal sheets. **schedule of pay items.**

If the bidder bids on item numbers deleted or not included in the department's itemized proposal sheets, **schedule of pay items** the department will disregard the items and adjust the total bid accordingly. In the event the bidder bids on both **its** computerized **schedule of pay items** and department itemized proposal sheets, **the department's schedule of pay items**, the department's itemized proposal sheets **schedule of pay items** shall govern. The bidder is responsible for all errors.

(f) A bidder must file a sworn ~~or unsworn~~ statement executed by or on behalf of the person, firm, association, or corporation submitting the bid, certifying that ~~such~~ **the** person, firm, association, or corporation has not, either directly or indirectly:

- (1) entered into any agreement;
- (2) participated in any collusion; or
- (3) otherwise taken any action;

in restraint of free competitive bidding in connection with the submitted bid. The required form for the statement will be ~~provided~~ **incorporated into the format specified by the proposal form and as applicable** to each prospective bidder.

(g) When an:

- (1) alternate bid is requested; ~~or when an~~
- (2) item in the proposal **form** contains a choice to be made by the bidder;

the bidder must indicate its choice in accordance with the special provisions or specifications for that particular item, and thereafter no further choice will be permitted.

(h) ~~The bidder's~~ **A paper proposal bid** must show the firm name or names and be signed in ink **by**:

(1) ~~by~~ the individual;

(2) ~~by~~ one (1) or more members of the partnership;

(3) ~~by~~ one (1) or more members or officers of:

(A) each company representing a joint venture; **or**

(4) ~~by one (1) or more members or officers of~~ (B) a corporation duly authorized to sign contracts; or

(5) ~~by~~ (4) an agent of the bidder legally qualified and acceptable to the department.

(i) **An electronic proposal bid must be submitted through and authenticated by a designated electronic medium.**

(j) **To submit an electronic proposal bid, a bidder shall pay the fees required by the designated electronic medium to participate in the electronic bidding system.**

(i) ~~(k)~~ **(k)** The bidder must properly execute ~~and sign~~ the following **in a format specified by the department**:

(1) The bid bond.

(2) The performance bond.

(3) The highway contract form.

(4) ~~The proposal.~~

(5) ~~(4)~~ The noncollusion ~~statement or noncollusion~~ affidavit.

(6) ~~(5)~~ The current contractual obligations.

**(6) Any other information or assurances specified in the notice to contractors.**

(7) ~~All other~~ **Any** forms included in the proposal **form** before submitting same.

~~All forms must bear the same signature throughout. The contract documents must include authorized signatures and titles in order for the contract documents to be considered properly executed.~~

(j) ~~An instrument submitted shall not be notarized by:~~

(1) ~~a party to the transaction;~~

(2) ~~any officer, owner, or stockholder of the company; or~~

(3) ~~any relative of the signatory.~~

*(Indiana Department of Transportation; [105 IAC 11-3-7](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2194; filed Jun 14, 1993, 5:30 p.m.: 16 IR 2540; filed Jul 15, 1993, 4:00 p.m.: 16 IR 2821; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))*

SECTION 23. [105 IAC 11-3-8](#) IS AMENDED TO READ AS FOLLOWS:

### **[105 IAC 11-3-8](#) Bid and performance bonds**

**Authority:** [IC 8-23-2-6](#)

**Affected:** [IC 8-23-9](#)

Sec. 8. (a) A bidder must submit a bid bond and a performance bond ~~with its proposal~~ **as designated on the proposal page**, except as provided in subsection (c). The bonds must be:

(1) properly executed by a surety company satisfactory to the department; and ~~be~~

(2) payable to the state of Indiana.

(b) An Indiana resident agent or a nonresident agent, licensed in Indiana, or an employee of the surety company must execute the bonds. All **paper** executed bid and performance bonds must be:

(1) accompanied by a valid power of attorney letter; **and**

(2) **submitted as designated on the proposal page.**

**An electronic bid bond must be authenticated by a designated electronic medium.**

(c) ~~On~~ **For contracts of one hundred thousand dollars (\$100,000) or less for:**

- (1) roadside mowing;
- (2) vegetation control;
- (3) demolition;
- (4) landscaping;
- (5) fencing;
- (6) seeding and sodding;
- (7) bridge painting; and
- (8) guardrail installations; ~~of one hundred thousand dollars (\$100,000) or less, the bidder may elect not to furnish~~

a performance bond **is not required**. If the bidder elects not to furnish the performance bond, an amount equivalent to ten percent (10%) of the amounts payable will be deducted and retained by the department until final payment is made.

(d) The bid bond must be in the penal sum of an amount equal to five percent (5%) of the amount bid. The performance bond must be in the penal sum of an amount not less than one hundred percent (100%) of the amount bid.

(e) ~~The department will require a~~ **When the** surety company ~~furnishing~~ **furnishes** a bond to a bidder in an amount exceeding the ~~its~~ underwriting limitations, as shown by the latest U.S. Department of the Treasury's register, ~~to the surety company shall~~ file the necessary reinsurance agreements with the department, on forms provided by the department, within fifteen (15) days from the date of notification to the contractor of ~~an~~ insufficient bond. The reinsurance agreements must be furnished by a surety company acceptable to the department.

(f) Failure to furnish ~~the reinsurance agreements within the stated time~~ **required documentation or assurances such that the department cannot execute the contract with the bidder** will be cause for forfeiture of the bid bond and reduction in the bidder's prequalification. At the discretion of the commissioner:

- (1) the award of the contract may be made to the next eligible bidder; ~~or~~
- (2) the work may be readvertised; or
- (3) all bids may be rejected and the work not readvertised.

*(Indiana Department of Transportation; [105 IAC 11-3-8](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2195; filed Jun 14, 1993, 5:30 p.m.: 16 IR 2541; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))*

SECTION 24. [105 IAC 11-3-9](#) IS AMENDED TO READ AS FOLLOWS:

#### **[105 IAC 11-3-9](#) Combination proposal bids**

**Authority:** [IC 8-23-2-6](#)

**Affected:** [IC 8-23-10](#)

Sec. 9. If the department elects, ~~proposals~~ **proposal forms** may be issued for projects in combination or separately, so that bids may be submitted either on the combination or on separate units of the combination. The commissioner may make awards on combination bids or separate bids to the best advantage of the state. No combination bids, other than those specifically set up in the ~~proposals~~ **proposal forms** by the department, will be considered.

*(Indiana Department of Transportation; [105 IAC 11-3-9](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2196; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))*

SECTION 25. [105 IAC 11-3-10](#) IS AMENDED TO READ AS FOLLOWS:

#### **[105 IAC 11-3-10](#) Conditional proposal bids**

**Authority:** [IC 8-23-2-6](#)

**Affected:** [IC 8-23-10](#)

Sec. 10. (a) Contracts on which bids are requested will be advertised as:

- (1) **"Roadway Construction Contracts Group (R, IR, RS)";**
- (2) **"Bridge Construction Contracts Group (B, IB)";**
- (3) **"Traffic Contracts Group (T, TM)";** or
- (4) **"Maintenance Contracts Group M".** ~~Proposals~~

**Proposal bids** will be marked "regular" or "conditional", and the bidder shall ~~strike out~~ **select** the word ~~which does not apply~~ **that applies**; otherwise, the proposal **bids** will be considered regular. A bidder may submit either a regular or a conditional proposal **bid** on a contract unless otherwise stated in the notice to contractors or the special provisions, provided, the bidder submits at least one (1) regular proposal **bid** in the same group. The sum of a bidder's regular ~~proposals~~ **proposal bids** in all groups and the bidder's uncompleted work on hand must not exceed the bidder's qualification limits.

(b) The bidder may submit a maximum of three (3) conditional ~~proposals~~ **proposal bids** in a group, ~~conditional~~ **conditioned** on ~~its the bidder's~~ failure to be the lowest bidder on its regular ~~proposals~~ **proposal bids** in that group. If the bidder submits more than three (3) conditional ~~proposals~~ **proposal bids** in a group, the commissioner will reject all conditional ~~proposals~~ **proposal bids** of that bidder ~~which that~~ apply to that particular group. If all of the bidder's regular ~~proposals~~ **proposal bids** in a group are the lowest acceptable bids, then all of its conditional ~~proposals~~ **proposal bids** in that group will be null and void.

(c) For each of the regular ~~proposals of a bidder~~ **proposal bids** in a group ~~which that~~ is not the lowest acceptable bid, the commissioner may select one (1) of the bidder's conditional ~~proposals~~ **proposal bids** in that group, and it will then become regular. The commissioner will select conditional ~~proposals~~ **proposal bids** to the best advantage of the state. No bidder will be awarded contracts in a group exceeding the number of its regular ~~proposals~~ **proposal bids** submitted in that group.

(Indiana Department of Transportation; [105 IAC 11-3-10](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2196; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 26. [105 IAC 11-3-11](#) IS AMENDED TO READ AS FOLLOWS:

#### [105 IAC 11-3-11](#) Delivery of proposal bids

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 11. A bidder must submit each proposal ~~in a sealed envelope prior to bid by the medium designated in the proposal form before~~ the time and at the location specified in the advertisement. **notice to contractors in order to be considered. When the proposal form allows a paper proposal bid to be submitted, the bid shall be submitted in a sealed envelope,** and the blank spaces on the envelope furnished must be filled in correctly to clearly indicate its content. When an envelope other than the one furnished by the department is used, it must be:

- (1) of the same general size and shape; and be
- (2) similarly marked to clearly indicate its contents.

**Paper proposals bids** received after the time advertised for opening of bids will be returned to the bidder unopened.

(Indiana Department of Transportation; [105 IAC 11-3-11](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2196; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 27. [105 IAC 11-3-12](#) IS AMENDED TO READ AS FOLLOWS:

#### [105 IAC 11-3-12](#) Withdrawal or revision of proposal bids

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-10](#)

Sec. 12. **A bidder may withdraw or revise a proposal bid through a medium designated in the proposal**

**form before the time set for receipt of bids. When a paper bid is submitted**, a bidder may withdraw or revise a proposal **bid** after it has been deposited with the department if the request for withdrawal or revision is received by the department in writing at the location specified in section 11 of this rule prior to **before** the time set for receipt of bids.

(Indiana Department of Transportation; [105 IAC 11-3-12](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2196; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 28. [105 IAC 11-3-13](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-3-13](#) Public opening of proposal bids**

**Authority:** [IC 8-23-2-6](#)

**Affected:** [IC 8-23-9-1](#); [IC 8-23-10](#)

Sec. 13. ~~Proposals~~ **Proposal bids** will be **downloaded from the electronic medium or** opened and read publicly on the date and at the time and place advertised or at another public place that the commissioner may designate on the day the **proposal** bids are to be ~~opened~~ **read publicly**. Bidders, their authorized agents, and other interested parties are ~~invited to~~ **may** be present. **The department shall not release the individual estimated items that were summarized in the engineer's total cost estimate.**

(Indiana Department of Transportation; [105 IAC 11-3-13](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2196; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 29. [105 IAC 11-3-14](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-3-14](#) Consideration of proposal bids**

**Authority:** [IC 8-23-2-6](#)

**Affected:** [IC 8-23-9](#); [IC 8-23-10](#)

Sec. 14. (a) **When the proposal form allows paper proposal bids to be accepted and** after the ~~proposals~~ **proposal bids** are opened and read, the ~~proposals~~ **proposal bids** will be compared on the basis of the summation of the products of the quantities shown in the department's ~~itemized proposal~~ **schedule of pay items** by the unit prices bid. If no unit price is shown for a pay item, the unit price will be determined by dividing the extension by the quantity shown in the department's ~~itemized proposal~~ **scheduled pay items**. If no extension or unit price is shown for one (1) pay item, the extension will be determined by subtracting the extensions from the contractor's total bid amount, provided that there are no errors in the contractor's extensions. The results of such comparisons will be available to the public. In the event of a discrepancy between unit prices bid and extensions, the unit prices bid will govern.

(b) The award of a contract, if it will be awarded, will be made after the opening of **proposal** bids to the lowest **and best** responsible and qualified bidder whose proposal **bid** complies with all the requirements prescribed in the proposal **form** and this article, provided the sum is not greater than the engineer's estimate. However, the commissioner may award a contract if the **proposal** bid is not more than five percent (5%) above the engineer's estimate and the commissioner believes that awarding a contract is in the best interests of the state. If the notice to proceed is not dated within sixty (60) days of the opening of bids, the proposal **bid** may be withdrawn by the contractor or the award rescinded by the commissioner. **Acceptance of the contract by the contractor is deemed a reaffirmation of all items and prices in the original proposal bid.** However, the proposal **bid** may not be withdrawn by the contractor if the notice to proceed is not dated within sixty (60) days of the opening of bids due to any of the following reasons:

- (1) The contractor fails to furnish requested forms or information.
- (2) The contractor has agreed to a delay.
- (3) The department is involved in any judicial or administrative action or appeal relating to:
  - (A) a minority business enterprise;
  - (B) a disadvantaged business enterprise;
  - (C) a women's business enterprise goal or program; or
  - (D) any other judicial or administrative action arising out of the proposal **bid**.

- (4) The contractor, either directly or indirectly, causes a delay through its commission or omission.
- (5) The proposal **bid** states otherwise.

(c) No proposal **bid** will be binding on the department until the contract form has been properly executed by the commissioner and approved by the attorney general. **In no event shall** the contractor ~~will not~~ be compensated for any costs incurred ~~prior to~~ **before** the notice to proceed.

(Indiana Department of Transportation; [105 IAC 11-3-14](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2196; filed Jun 14, 1993, 5:30 p.m.: 16 IR 2541; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 30. [105 IAC 11-3-14.5](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-3-14.5](#) Tax liability**

**Authority:** [IC 8-23-2-6](#)

**Affected:** [IC 6-8.1-8-2](#); [IC 8-23-10-7](#)

Sec. 14.5. (a) Under [IC 8-23-10-7](#), if the department is notified by the department of state revenue that a bidder is on the most recent tax warrant list, the department may not ~~award~~ **enter into** a contract ~~to~~ **with** that bidder until:

- (1) the bidder provides to the department a statement from the department of state revenue that the bidder's delinquent tax liability has been satisfied; or
- (2) the department receives a notice from the commissioner of the department of state revenue under [IC 6-8.1-8-2\(k\)](#).

(b) Failure of a bidder to meet the requirements of subsection (a) within ~~seven (7)~~ **fifteen (15)** days after the opening of bids will be considered cause for: ~~rejection of the proposal under section 16(e)(1) of this rule.~~

- (1) cancellation of the award;**
- (2) forfeiture of the bid bond; and**
- (3) reduction in the bidder's qualification.**

(Indiana Department of Transportation; [105 IAC 11-3-14.5](#); filed Jun 14, 1993, 5:30 p.m.: 16 IR 2542; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

SECTION 31. [105 IAC 11-3-15](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-3-15](#) Corporations**

**Authority:** [IC 8-23-2-6](#)

**Affected:** [IC 8-23-10](#)

Sec. 15. (a) The department will not enter into a contract or approve a subcontract with any corporation unless the corporation is registered and in good standing to do business in Indiana by the Indiana secretary of state. If:

- (1) the corporation does not have authorization to do business in Indiana at the time its bid is submitted; and**
- (2) its bid is low and accepted;**

valid evidence must be furnished within fifteen (15) days after the opening of bids showing that the authorization has been acquired.

(b) Failure to become authorized to do business in Indiana and to submit valid evidence within the stated time will be considered cause for:

- (1) cancellation of the award;**
- (2) forfeiture of the bid bond; and**
- (3) a reduction in the bidder's qualification.**

~~At the discretion of the commissioner, the award may be made to the next eligible bidder, or the work may be readvertised, or all bids may be rejected and the work not readvertised.~~

(Indiana Department of Transportation; [105 IAC 11-3-15](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2197; readopted filed

SECTION 32. [105 IAC 11-3-16](#) IS AMENDED TO READ AS FOLLOWS:

**[105 IAC 11-3-16](#) Rejection of proposal bid after opening**

**Authority:** [IC 8-23-2-6](#)

**Affected:** [IC 8-23-9-2](#); [IC 8-23-9-13](#); [IC 8-23-10-1](#); [IC 8-23-10-6](#)

Sec. 16. (a) A proposal **bid** opened and read will be subsequently rejected under the following conditions:

(1) ~~Failure~~ **When the bidder fails** to submit with the bid a:

(A) properly executed:

(i) bid bond;

(2) ~~Failure to submit with the bid a properly executed~~ (ii) performance bond; **or**

(iii) **noncollusion affidavit; or**

(3) ~~Failure to submit a~~ (B) valid power of attorney letter which authorizes the person to bind the surety to the bid bond and the performance bond.

(4) ~~Failure to submit with the bid a properly executed noncollusion statement or noncollusion affidavit.~~

(5) (2) When the bidder:

(A) does not hold a valid certificate of qualification; ~~or when the bidder~~

(B) exceeds its bidding capacity.

(6) ~~If~~ (3) **When the bidder submits a paper proposal bid and:**

(A) the department cannot mathematically determine a bidder's unit price or lump sum price for each pay item in the proposal **bid; or**

(7) ~~If~~ (B) the department's calculation of the bidder's unit price or lump sum price is zero (0) or a negative amount.

(8) (4) When no bids received on a contract are less than or equal to five percent (5%) above the engineer's estimate.

(9) (5) When the bidder adds a provision reserving the right to accept or reject the award.

(10) (6) If the bidder modifies or alters a provision in the contract documents.

(11) (7) If the bidder is a trust and fails to disclose the identity of each of the following:

(A) Beneficiary of the trust.

(B) Settlor empowered to revoke or modify the trust.

(8) **When the bidder fails to submit documents required by the proposal page at the time it submits a proposal bid.**

(b) The commissioner **in the commissioner's sole personal judgment and discretion** may reject any and all ~~proposals~~ **proposal bids** for cause.

(c) The commissioner ~~reserves the right to~~ **may** reject any and all ~~proposals~~ **proposal bids** for any reason, including, but not limited to, any of the following situations, if, in the sole personal judgment and discretion of the commissioner, the rejection is in the best interest of the state:

(1) When the bidder fails to comply with this article.

(2) When there exists evidence of collusion among bidders.

(3) When the bidder has had involvement, in any way, in the design of the project or preparation of the plans or special provisions, **unless a general announcement specifically allows for such involvement.**

(4) ~~When a situation has developed which makes it~~ **is** either impossible or not practical to proceed with the proposed work.

(5) When the bids are above but within five percent (5%) of the engineer's estimate.

(6) When: ~~the~~

(A) **a paper proposal bid** is on a form other than the one furnished or authorized by the department for that bidding; **or**

(B) **an electronic proposal bid is submitted through an entity other than a designated electronic medium.**

(7) If the proposal **bid** contains obviously unbalanced prices.

(8) If ~~the~~ **a paper proposal bid** is not completed either in ink or in type.

(9) When the highway contract form, proposal form, current contractual obligations, ~~or other forms that appear in the proposal~~ **written documents required in section 7 of this rule** are not properly executed, signed, and

notarized ~~where required~~, subject to subsection (d).

(10) When the commissioner, in the exercise of the commissioner's sole personal judgment and discretion, determines, subsequent to the opening of bids, facts exist ~~which~~ **that** would disqualify the low bidder or that such low bidder is not competent, ~~and~~ responsible, **or of a character satisfactory to perform work for the state of Indiana.**

**(11) When the bidder fails to meet the requirements of the disadvantaged business enterprise or women or minority business enterprise programs, where applicable.**

(d) When ~~the documents in the proposal~~ are omitted or improperly executed or signed, the department may allow the bidder to make the necessary corrections subsequent to the opening. ~~Such~~ **The** corrections, if allowed, must be made within seven (7) calendar days after notification to the bidder of the irregularities. However, this provision does not apply to the ~~situations which appear~~ **conditions described** in subsection (a).

(e) Failure to execute the requested corrections within the seven (7) day period will be cause for the cancellation of the award, forfeiture of the bid bond, and a reduction in the bidder's qualification. In such event, the commissioner, in the exercise of the commissioner's sole personal judgment and discretion, may either:

- (1) award the contract to the next eligible bidder;
- (2) reject all bids and readvertise for new bids; or
- (3) reject all bids and not readvertise for new bids.

**(f) For proposal bids rejected under sections 14 through 16 of this rule [sections 14 through 15 of this rule and this section] the department, at the discretion of the commissioner, may either:**

- (1) award the contract to the next eligible bidder;**
- (2) reject all bids and readvertise for new bids; or**
- (3) reject all bids and not readvertise for new bids.**

(Indiana Department of Transportation; [105 IAC 11-3-16](#); filed Jul 25, 1991, 3:30 p.m.: 14 IR 2197; filed Jun 14, 1993, 5:30 p.m.: 16 IR 2542; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899; filed May 23, 2007, 2:58 p.m.: [20070620-IR-105070036FRA](#))

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